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Sanctity in the Sanctuaries (?): Legal Implications of “Second Amendment Sanctuary” Resolutions in Kentucky

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Sanctity in the Sanctuaries (?): Legal Implications of “Second Amendment Sanctuary” Resolutions in Kentucky

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In the waning days of 2019 and the beginning of 2020, local governments across the Commonwealth of Kentucky began to pass resolutions calling themselves “Second Amendment Sanctuaries.”[1]

(applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn1) These resolutions are in opposition to federal and state gun control legislation and are part of a larger nationwide movement.[2] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn2) In Kentucky, the movement is largely in response to the potential of a “Red Flag” law being proposed in the 2020 General Assembly.[3] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn3)

“Red Flag” laws, also known as Extreme Risk Protection Orders (“ERPO”), allow law enforcement officers (and family or household members in some states) to ask for a court order to temporarily remove an individual’s access to guns when they exhibit dangerous behavior or “red flags”.[4]

(applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn4) Connecticut was the first state to enact such a law in 1999,[5] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn5) with 17 states having them as of January 2020. [6] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn6) These laws are often enacted in response to mass shootings, with the number having doubled since the mass school shooting in Parkland, Florida in 2018.[7] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn7) So far, these laws have survived Second Amendment challenges, however the laws passed since 2018 have been broader than initial “Red Flag” laws passed in Connecticut and Indiana. [8] (applewebdata://55041172-FA79-4E47-

93F9-13B7CCB0999D#_edn8) The Kentucky General Assembly has yet to vote on a “Red Flag” law.[9] (applewebdata://55041172-FA79-4E47-93F9-

13B7CCB0999D#_edn9) However in a November 2019 meeting of the Kentucky Interim Joint Judiciary Committee, State Sens. Paul Hornback, (R-Shelbyville) and Morgan McGarvey, (D-Louisville) testified about such a bill, stating that they were close to finalizing a draft of the bill and filing it for the

Across the nation, more than 400 municipalities have passed resolutions opposed to the enforcement of federal and state gun laws.[11] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn11) In some areas sheriffs and law enforcement officials have stated they will not enforce gun control statutes.[12] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn12) Many of these municipalities have declared themselves “Second Amendment sanctuaries”, borrowing the terminology from the recent “Sanctuary City” movement.[13] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn13) In addition to “Red Flag” laws, common targets of these resolutions include universal gun background checks and assault-style weapons bans.[14] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn14) The language used in Second Amendment sanctuary resolutions can vary, with some municipalities offering a general declaration in support of the Second Amendment and others stating specifically how they will withhold support for gun laws.[15] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn15)

In Kentucky, the potential enactment of a “Red Flag” law has led to many counties adopting Second Amendment sanctuary resolutions.[16] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn16) As of January 8th, 2020, at least 14 counties have declared themselves Second Amendment Sanctuaries.[17] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn17) As of January 5th, 115 out of Kentucky’s 120 counties have enacted or are considering these resolutions.[18] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn18) At least one county, Marshall County, has proposed an ordinance prohibiting any “agent, department, employee, or official of Marshall County” from “[k]nowingly and willingly, participate in any way in the enforcement of any Unlawful Act . . . regarding personal firearms, firearm accessories, or ammunition.”[19] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn19)

MOST OF “SECOND AMENDMENT SANCTUARY” COUNTIES HAVE ENACTED RESOLUTIONS RATHER THAN ORDINANCES. UNDER KENTUCKY STATE LAW, AN ORDINANCE IS “AN OFFICIAL ACTION OF A CITY LEGISLATIVE BODY, WHICH IS A REGULATION OF A GENERAL AND PERMANENT NATURE AND ENFORCEABLE AS A LOCAL LAW OR IS AN APPROPRIATION OF MONEY.” [20] (APPLEWEBDATA://55041172-FA79-4E47-93F9-13B7CCB0999D#_EDN20) WHILE A RESOLUTION IS “NOT STATUTORILY DEFINED BUT IS DISTINGUISHED FROM AN ORDINANCE AS BEING “AN ACT OF A SPECIAL OR TEMPORARY CHARACTER NOT PRESCRIBING A PERMANENT RULE OF GOVERNMENT, BUT MERELY DECLARATORY OF THE WILL OR OPINION OF A MUNICIPAL CORPORATION.” [21] (APPLEWEBDATA://55041172-FA79-4E47-93F9-13B7CCB0999D#_EDN21) THUS RESOLUTIONS DO NOT CARRY THE FULL FORCE OF THE LAW. [22] (APPLEWEBDATA://55041172-FA79-4E47-93F9-13B7CCB0999D#_EDN22) ADDITIONALLY, SECTION 65.870 OF THE KENTUCKY REVISES STATUTES STATES THAT “[N]O EXISTING OR FUTURE CITY, COUNTY, URBAN-COUNTY GOVERNMENT, CHARTER COUNTY, CONSOLIDATED LOCAL GOVERNMENT, UNIFIED LOCAL GOVERNMENT, SPECIAL DISTRICT, LOCAL OR REGIONAL PUBLIC OR QUASI-PUBLIC AGENCY, BOARD, COMMISSION, DEPARTMENT, PUBLIC CORPORATION, OR ANY PERSON ACTING UNDER THE AUTHORITY OF ANY OF THESE ORGANIZATIONS MAY OCCUPY ANY PART OF THE FIELD OF REGULATION OF THE MANUFACTURE, SALE, PURCHASE, TAXATION, TRANSFER, OWNERSHIP, POSSESSION, CARRYING, STORAGE, OR TRANSPORTATION OF FIREARMS, AMMUNITION, COMPONENTS OF FIREARMS, COMPONENTS OF AMMUNITION, FIREARMS ACCESSORIES, OR COMBINATION THEREOF.” [23] (APPLEWEBDATA://55041172-FA79-4E47-93F9-13B7CCB0999D#_EDN23)

If Kentucky were to pass a “Red Flag” law or any other type of gun control legislation, it is not likely that these “Second Amendment Sanctuary” resolutions would have any legal effect.[24] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn24) If Marshall County or any other jurisdiction within Kentucky were to pass an ordinance with the force of law, it would likely be in violation of § 65.870.[25] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn25) Although there may not be much legal impact, there is surely to be political impact as the Kentucky General Assembly addresses and debates these issues in the 2020 legislative session.[26] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_edn26)

[1] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref1) Deni Camper, *Gun Rights Advocates Push to Create '2nd Amendment Sanctuary Counties' in KY*, WLKY (Jan. 7, 2020), <https://www.wlky.com/article/gun-rights-advocates-push-to-create-2nd-amendment-sanctuary-counties-in-ky/30421467#>.

[2] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref2) *Id.*

[3] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref3) *Id.*

[4] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref4) Tara Sklar, *Elderly Gun Ownership and the Wave of State Red Flag Laws: An Unintended Consequence That Could Help Many*, 27 Elder L.J. 35, 37 (2019).

[5] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref5) Grace Segers, *What are "Red Flag" Laws, and Which States Have Implemented Them?*, CBS News, (Aug. 9, 2019), <https://www.cbsnews.com/news/what-are-red-flag-laws-and-which-states-have-implemented-them/>.

[6] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref6) Sean Campbell & Alex Yablon, *Red Flag Laws: Where the Bills Stand in Each State*, Trace, (last updated Jan. 17, 2020, 4:05 PM), <https://www.thetrace.org/2018/03/red-flag-laws-pending-bills-tracker-nra/>.

[7] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref7) Segers, *supra*, note 5.

[8] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref8) Sklar, *supra*, note 4, at 39–40.

[9] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref9) Joe Sonka, *Kentucky Advocates Pitch 'Red Flag' Law to Remove Guns from Those Deemed a Threat*, Louisville Courier Journal (Nov. 22, 2019), <https://www.courier-journal.com/story/news/politics/ky->

[10] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref10) *Id.*

[11] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref11) Jennifer Mascia, *Second Amendment Sanctuaries, Explained*, The Trace (Jan. 14, 2020), <https://www.thetrace.org/2020/01/second-amendment-sanctuary-movement/>.

[12] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref12) *Id.*

[13] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref13) *Id.*

[14] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref14) *Id.*

[15] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref15) *Id.*

[16] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref16) Will Wright, *A Second Amendment Sanctuary Movement is Sweeping Through Kentucky. Here's Why.*, Lexington Herald-Leader, (Jan. 3, 2020, 3:21 PM), <https://www.kentucky.com/news/state/kentucky/article238908618.html>.

[17] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref17) Associated Press, *'This Map Will Evolve Quickly': Kentucky Counties Pass Resolutions Supporting Gun Rights*, Louisville Courier Journal, (Jan. 7, 2020 12:31 PM), <https://www.courier-journal.com/story/news/local/2020/01/07/kentucky-counties-passed-resolutions-declaring-local-governments-second-amendment-sanctuaries/2832055001/>.

[18] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref18) *Kentucky Second Amendment Sanctuary Counties Sweep Across the State*, Gun Rights Watch, (Dec. 22, 2019 6:30 PM), <https://gunrightswatch.com/news/2019/12/22/kentucky/kentucky-becomes-a-sea-of-orange-as-second-amendment-sanctuary-county-efforts-progress/>.

[19] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref19) Marshall County, Ky. Proposed Ordinance 2019-15 (proposed Dec. 17, 2019); see also Dalton York, *Marshall County Working to Have Kentucky's First 'Sanctuary County' Ordinance for Guns*, WKMS, (Dec. 17, 2019), <https://www.wkms.org/post/marshall-county-working-have-kentucky-s-first-sanctuary-county-ordinance-guns-stream/0>.

[20] (APPLEWEBDATA://55041172-FA79-4E47-93F9-13B7CCB0999D#_EDNREF20) LEGISLATIVE RESEARCH COMM'N, KENTUCKY MUNICIPAL STATUTORY LAW, INFORMATIONAL BULLETIN NO. 145, AT 36 (QUOTING KY. REV. STAT. ANN. § 83A.010 (WEST 1992).)

[21] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref21) *Id.* at 36 (quoting 62 *Corpus Juris Secundum*. Sec. 411, Municipal Corporations. New York: The Amer. Law Book Co., 1949.).

[22] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref22) Wright, *supra* note 16.


[23] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref23) Ky. Rev. Stat. Ann. § 65.870 (West 2012).

[24] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref24) Wright, *supra* note 16.

[25] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref25) § 65.870.

[26] (applewebdata://55041172-FA79-4E47-93F9-13B7CCB0999D#_ednref26) Wright, *supra* note 16.

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